IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Original Jurisdiction

Dated: Nainital the 12th day of June , 2002

Criminal Misc. Bail Application Number 458 of 2002

Order on the Bail Application

Criminal Side
(1)Shamasad son of Sri Sharif and (2) Hameed son of Sri Khurshid, both residents of Makhanpur Mahmood, Alampur, P.S. Bhagwanpur, District Hardwar
…….Applicant(s)

Versus

State of Uttaranchal ……..Opposite party

Arising out of - Case crime no. 162A of 2001
Under sections 323,147,302,325,324,504 of I.P.C.
P.S. Bhagwanpur,
District Hardwar

By the Court

Hon'ble Irshad Hussain, J.

Heard the learned counsel for the applicants, the learned A.G.A. and Sri S.P.S.Panwar appearing on behalf of the complainant.

On behalf of the applicants-accused parity has been sought with the co-accused, viz., Gulsher and Gulzar and Zulfkar released on bail by this Court per order dated 28.02.2002 and 01.03.2002 respectively.

It has been pointed out that both these applicants were also shown to be wielding Danda as has been the case of the co-accused Gulzar and Zulfkar who had been released on bail. In the F.I.R. copy of which is at page 19, no specific role has been assigned, but the allegations are general as regards the role of the assailants is concerned in assaulting the three victims, one of whom, viz., Akhlaq had later on died as a result of injuries.

On behalf of the complainant it was pointed out that the averment of the affidavit in support of the application for bail itself indicate that the assailants have made counter attack instead of making any self defence in the same occurrence. Attention was drawn to the averments of the paragraph 8 and paragraph 15 of the affidavit of Mohmmed Suleman to bring home the point of view. Having gone through the averment of the affidavit I do not find myself in agreement with the submission of the learned counsel for the complainant. The reason is that a person acting in self defence is not expected to first receive the assault on his person and then to defend himself by making counter assault in the same occurrence and if there is averment that in self defence, the assault was made on the members of the attaking party, it would not mean that the same was a counter attack on the members of the complainant party. Considering the fact that the applicants were also carrying Danda as is the case of the applicants with the case of co-accused, who has been released on bail, I find it a case of parity.

Let the applicants (1) Shamsad son of Sri Sharif and (2) Hameed son of Sri Khurshid, both residents of Makhanpur Mahmood, Alampur, P.S. Bhagwanpur, District Hardwar be released on bail in case crime no. 162A of 2001, under sections 323, 147, 302, 325, 324, 504 of Indian Penal Code, Police Station, Bhagwanpur, District Hardwar on their each filling a personal bond and two sureties each to the satisfaction of ACJM, Roorkee District, Hardwar.

(Irshad Hussain, J.)

12.06.2002/B